Service Contracting Myths

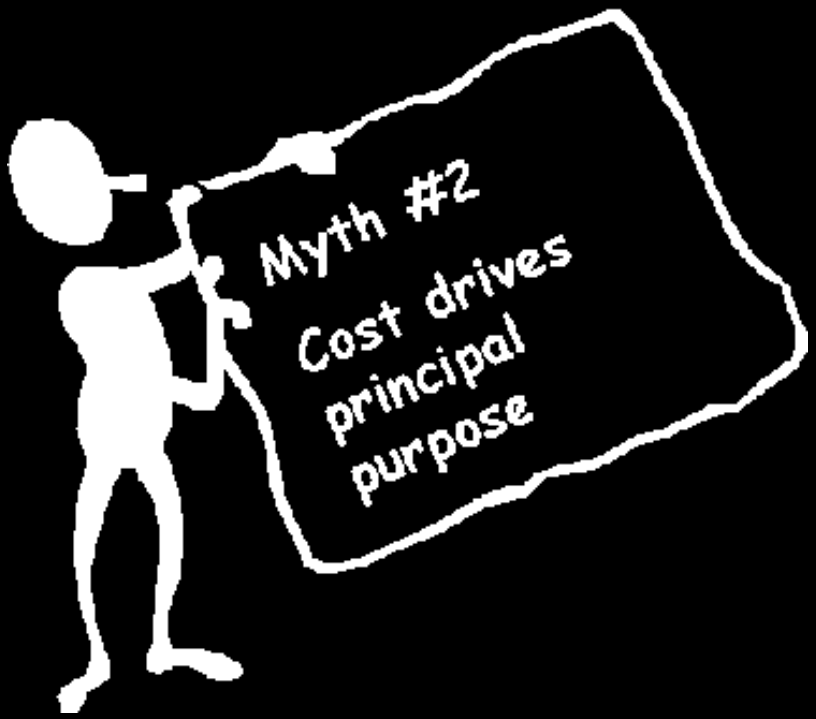
There are many service contracting myths caused by complicated regulations and legislation.

These myths hinder effective service contracting.

Let’s take a look at the most common myths and where they came from.

ORIGIN: SCA is an acronym for Service Contract Act. Because the words “service contract” are in the name of the Act it is natural to assume that all service contracts are covered by the SCA.

FACT: The Service Contract Act was created to ensure that service employees are paid a fair wage. There are several services that are exempt from SCA, including (but, not limited to) maintenance and repair of certain types of equipment, services provided by professionals, construction, and work done in accordance with the Walsh-Healey Act. “Whether or not the [SCA] applies to a specific service contract will be determined by the definitions and exceptions given in the act, or implementing regulations.” (FAR 37) For more information on labor laws, see FAR 22.



ORIGIN: When a contract has both supplies and services, it is known as a hybrid contract. Hybrid contracts pose a unique challenge when it comes to contract reporting. Do you code the DD Form 350 as a supply or service? A contract is coded as a service if the principal purpose of the contract is services. The myth states that if you pay more for supplies than services, the contract is a supply contract and vice versa.

FACT: Principal purpose is not determined by price nor percentage of work. It is determined by what the intent of the contract is. The term “intent” is a bit ambiguous—it’s not determined by cost or percentage of work. Rather, it is determined by what you most hope to accomplish by the contract.

ORIGIN: This myth originates from two misconceptions. The first is that all service contracts must be performance-based. The second is that if a service contract isn't PBSA it will count against reporting goals.

FACT: Not all service contracts are required to be PBSA! If PBSA is contrary to good business sense, you don't have to use it. In fact, some service contracts are not subject to PBSA requirements! Research and Development contracts that use 6.5 and 6.6 money are subject to PBSA. Myth 8 covers reporting goals.

ORIGIN: Part 35 of the FAR states: “Unlike contracts for supplies and services, most R&D contracts are directed toward objectives for which the work or methods cannot be precisely described in advance.”

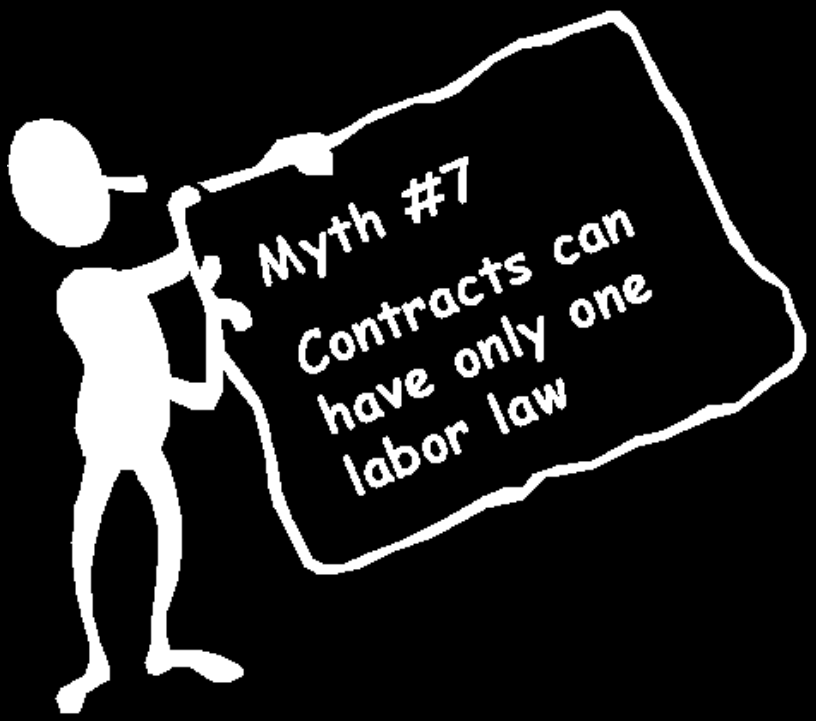
FACT: There are only two major types of purchase—supplies and services. Research and development is a specialized type of service, just as construction, architect-engineering and contracted logistic support are special types of services. The Air Force Program Executive Officer for Services (AFPEO/SV) has stated that R&D contracts more closely resemble services than supplies. We are working to clean up the language in the regulations so that this distinction is clear.

ORIGIN: Repair, maintenance and overhaul are covered by SCA. Major overhaul that meets the criteria for remanufacturing (see FAR 22.1003-6) is covered by Walsh-Healey Public Contracts Act.

FACT: The regulation is commonly misread to say that remanufacturing is coded as a supply. What the regulation says is that when overhaul becomes remanufacturing it is subject to a different labor law. It does not say that the classification as a service is changed. *Labor laws do not determine whether a contract is for supplies or services.* NOTE: Repair and maintenance under construction contracts may be subject to the Davis-Bacon Act.

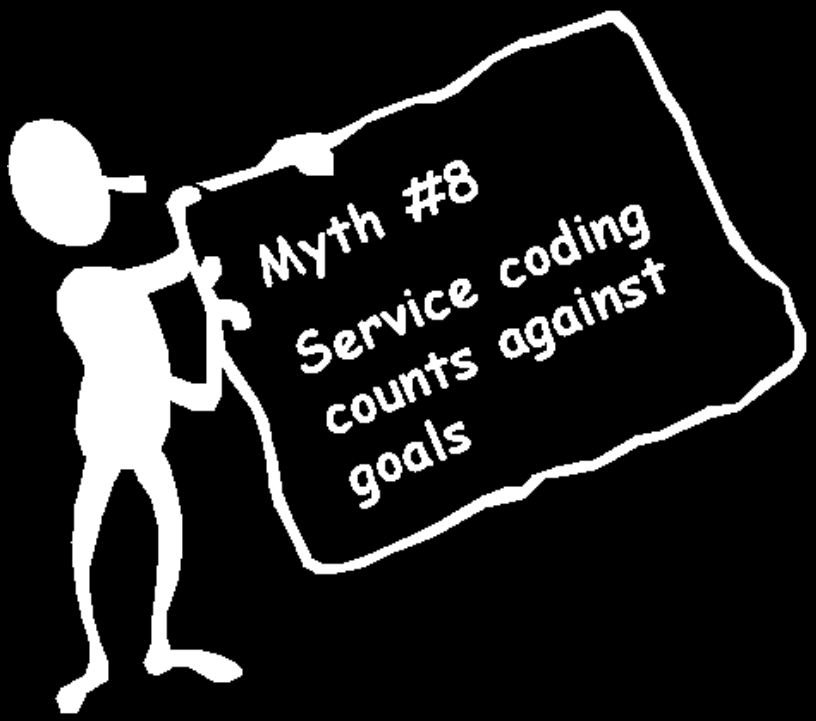
ORIGIN: The FAR groups the items covered by the law (“manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract”) under the label “supplies.”

FACT: This grouping is not found in the law and has led to the incorrect belief that items covered by Walsh-Healey must be supplies. The law does not exclude materials, supplies, articles or equipment that are manufactured or furnished in the performance of a service contract (i.e., remanufacturing.) *Once again, the inclusion of a labor law does not determine if the contract is for a supply or a service.*



ORIGIN: The SCA states that work covered by Walsh-Healey is not covered by SCA.

FACT: The exemption applies to the *work* covered by Walsh-Healey, not the contract. Both labor laws can be placed on a contract if both types of covered acquisitions are present. The contract should separate the acquisitions by line item or another method.



ORIGIN: ••50% of service contracts are to be PBSA by 2005.

FACT: The 50% goal applies to contracts that are not exempt from PBSA. Remember, most R&D contracts are exempt from PBSA standards. When it doesn't make good business sense to use PBSA, that is an allowable deviation. We are working to have the coding updated to reflect the contracting officer's decision not to use PBSA when it is not practicable or the action is exempt.

ORIGIN: A misinterpretation of FAR 37.602 which states that work statements (when practicable) should use measurable performance standards and financial incentives in a competitive environment.

FACT: Measurable performance standards and financial incentives have especially good results in competed acquisitions; they encourage contractors to develop the most innovative and cost-effective method of performing the work required in the solicitation. The regulation does not prohibit measurable performance standards and financial incentives from being applied to sole-source acquisitions. Performance-based acquisitions can encourage innovative cost savings regardless of the number of competitors.

ORIGIN: The PEO has chosen to oversee select services in a grouping known as a "portfolio." The portfolio excludes services (such as construction and A&E) that the PEO chooses not to oversee. The portfolio has been used (incorrectly) to determine what acquisitions are services.

FACT: The PEO has authority over all service contracts; however not all services are included in the portfolio. This does not change a contract's classification as a service. The PEO manages service contracts over $100M and has PBSA approval authority for contracts over $100K.
NOTE: The PEO can choose to see any service contract regardless of the threshold or portfolio.

ORIGIN: It is assumed that the principal purpose of a contract (whether for supplies or services) determines what clauses are included.

FACT: The principal purpose does play a role in determining what clauses are used. However, you may use clauses to cover the incidental supplies or services of a contract. Hybrid contracts may also include both types of clauses.